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Get practical advice
and insight from top
commercial real estate
practitioners

Practising Commercial Real Estate in a Changing Environment

Buying • Selling • Financing • Leasing



- Revisiting the negotiating and drafting of key provisions in today's agreement of purchase and sale
- Issues raised by distressed real estate and by specific types of vendors including lenders, receivers and trustees in bankruptcy
- New 'required by lenders' provisions, including 'market out' and MAC provisions
- Lease terms worth particular attention now
- Tender – right and wrong ways to go about it
- Working towards completion of the deal – the scope of the duty of good faith in bargaining
- Mortgage enforcement and remedies – a refresher and update
- Commercial landlord/tenant rights and remedies – recent caselaw
- Rights and remedies of various parties in insolvency scenarios

With a distinguished faculty including:

The Hon. Justice Geoffrey B. Morawetz, Superior Court of Justice (Ontario)
The Hon. James M. Farley, Q.C., Senior Counsel, McCarthy Tétrault LLP

Chairs

Simon P. Crawford, Bennett Jones LLP
Dana S. Porter, Stikeman Elliott LLP
Walter M. Traub, Goldman Sloan Nash & Haber LLP

DATE & TIME

Tuesday, September 22, 2009
9:00 a.m. – 4:30 p.m. EDT/EST

LOCATION

Osgoode Professional
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1 Dundas St. W., 26th Floor
Toronto, ON

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Practising Commercial Real Estate in a Changing Environment

Buying • Selling • Financing • Leasing

**It's a whole new ballgame
for commercial real estate
practitioners - do you
know the rules?**

No one knows how long the economic recession will last. But clearly, the legal strategies and best practices that were appropriate for boom times are not helpful when new kinds of issues are raised by clients or third parties in financial trouble. Moreover, the shifting balance of power between income property vendors and purchasers, borrowers and lenders, landlords and tenants, debtors and creditors, makes the practice of commercial real estate a whole new kind of game.

If you're under 40, you've never practised in an environment like the present one. And if you're over 40, you'll likely benefit from a thorough refresher and update on areas that are newly relevant again — such as mortgage remedies, landlord/tenant remedies and real estate transactions conducted under the shadow of insolvency proceedings.

For these reasons, *Osgoode Professional Development* has assembled an expert faculty to rethink the critical areas and issues of commercial real estate practice — both in terms of deals and business relationships that are just coming together or which appear to be working, and of others that are visibly in trouble, or headed for it. Special attention will be given to the problems raised by insolvency situations and/or involving 'distressed' real estate.

Make no mistake, this concise program will be your best single source of up-to-the-minute information, valuable insights and practical strategies for ensuring that you and your clients stay on top as the ground continues to shift beneath your feet. Don't miss it!

Register now by visiting www.osgoodepd.ca, **calling** 416.597.9725 or 1.888.923.3394, **emailing** opd-registration@osgoode.yorku.ca or **faxing** 416.597.9736.

Chairs

Simon P. Crawford, Bennett Jones LLP
Dana S. Porter, Stikeman Elliott LLP
Walter M. Traub, Goldman Sloan Nash & Haber LLP

Faculty

The Hon. Justice Geoffrey B. Morawetz Superior Court of Justice (Ontario)	Sheldon L. Disenhouse , Fraser Milner Casgrain LLP
The Hon. James Farley, Q.C. Senior Counsel, McCarthy Tétrault LLP	Jeffrey W. Lem , Davies Ward Phillips & Vineberg LLP
Peter Aghar , President and Chief Investment Officer, KingSett Capital	Norman B. Lieff , Ogilvy Renault LLP
Eric M. Carmona , Stikeman Elliott LLP	Elizabeth Pillon , Stikeman Elliott LLP
Silvana M. D'Alimonte , Blake, Cassels & Graydon LLP	William A. Rowlands , Lang Michener LLP
David A. Dell , Torys LLP	Alison Tortorice , Cadillac Fairview Corp.

8:30 Registration and Continental Breakfast

9:00 Welcome and Chairs' Introductory Remarks

Simon P. Crawford, Bennett Jones LLP

Dana S. Porter, Stikeman Elliott LLP

Walter M. Traub, Goldman Sloan Nash & Haber LLP

DEALS STILL 'ON THE RAILS'

9:10 Purchase Agreements Today: Revisiting the Negotiation Process and Key Provisions in the Agreement of Purchase and Sale

Jeffrey W. Lem, Davies Ward Phillips & Vineberg LLP

- Negotiating and drafting agreements of purchase and sale now – how are the deals different?
- Transactions involving distressed real estate
- Issues raised by specific types of vendors – lenders, receivers, trustees in bankruptcy, etc.
- Commercial title insurance: issues to be newly mindful of (including solvency of the insurer)

10:00 Show Me the Money: What's Different in Commercial Real Estate Finance?

David A. Dell, Torys LLP

- What's negotiable now, on what terms, and with whom?
- The effect of changes in the tenor of negotiation
- Limited recourse loans – still possible?
- New 'required by lenders' provisions, including 'market out' and material adverse change (MAC) provisions

10:35 Refreshment Break

10:50 Negotiating and Amending Key Lease Terms

William A. Rowlands, Lang Michener LLP

Alison T. Tortorice, Cadillac Fairview Corp.

- Lease terms deserving special attention in today's market
- Rethinking assignment, subletting and other exit strategies
- 'Going dark' provisions and their impact on other lease terms
- How can a tenant protect against landlord defaults?

12:00 Luncheon Dialogue/Business-Legal Interface

Peter Aghar, President and Chief Investment Officer
KingSett Capital

Eric M. Carmona, Stikeman Elliott LLP

- Six-month forecast; the most likely trends affecting income properties
- How commercial real estate lawyers and their clients can best assist each other

WHEN DISPUTES ARISE – BEST PRACTICES AND REMEDIES

1:00 The Unravelling Purchase and Sale: What to Expect – and Do – When the Deal Goes Wrong Before Closing

Norman B. Lieff, Ogilvy Renault LLP

- 'Red flags' to watch for from the other party
- Practical considerations when the purchaser wants out
- Tender: a refresher and update
- The current law on the scope of the duty of good faith in bargaining
- The use (and abuse) of certificates of pending litigation
- Recent caselaw on legal and equitable remedies for vendors and purchasers

1:45 Mortgage Enforcement and Remedies: A Refresher and Update

Silvana M. D'Alimonte, Blake, Cassels & Graydon LLP

- When a mortgage goes bad – enforcement from both mortgagor/mortgagee's perspectives
- Redemption and other borrowers' rights
- Caselaw update on powers of sale, judicial sales and foreclosures
- Dealing with competing claimants

2:30 Refreshment Break

2:40 When Commercial Landlords or Tenants Run into Problems

Sheldon L. Disenhouse, Fraser Milner Casgrain LLP

- Review and update on commercial landlord/tenant rights and remedies
- Rent relief and forbearance agreements
- What commercial real estate lawyers need to know about lease arbitration and mediation (including selection of the arbitrator and alternatives to arbitration)
- PPSA considerations for landlords/mortgagees in possession
- Grace under pressure; a handy matrix of considerations and options when you have 15 minutes to come up with a strategy and formulate your advice

Agenda [Cont'd]

3:25 What You Need to Know Now About Insolvency and Commercial Real Estate

Moderator

Walter M. Traub, Goldman Sloan Nash & Haber LLP

Panellists

The Hon. Justice Geoffrey B. Morawetz

Superior Court of Justice (Ontario)

The Hon. James Farley Q.C., McCarthy Tétrault LLP

Elizabeth Pillon, Stikeman Elliott LLP

- Rights and remedies of various parties in frequently-encountered insolvency scenarios
- Latest developments regarding priorities in insolvency situations
- What judges want to know/see before signing the order authorizing a sale of the property
- Ensuring that draft vesting orders (CCA and BIA) are proper in form and content
- Private vs. court-appointed receivers
- Recent developments in debtor-in-possession (DIP) financing

4:30 Chairs' Closing Remarks; Program Concludes

Registration

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Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

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Dress is business casual.

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